



June 2017

## Section-By-Section Summary of H.R. 2883

### PROMOTING CROSS-BORDER ENERGY INFRASTRUCTURE ACT

Committee on Energy and Commerce, Democratic Staff

H.R. 2883 establishes a new permitting process for applicants seeking to construct, connect, operate, or maintain a border-crossing facility for the purpose of importing or exporting oil, natural gas, or electricity from Canada or Mexico. This replaces the existing requirement that an entire trans-boundary project, not just a segment, obtain a presidential permit. Below is a section-by-section analysis of the major provisions of the bill.

#### **Sec. 2(a)(2): Certificate Of Crossing**

This section requires the relevant official to issue a "certificate of crossing" for a border-crossing facility of a project within 120 days of final action under the National Environmental Policy Act (NEPA), unless the official finds that the project "is not in the public interest of the United States." The relevant officials are FERC for oil and natural gas pipelines, and the Secretary of Energy for electric transmission lines. Right now, cross-border oil pipeline approval is delegated to the State Department. Moving this responsibility to FERC could lead to delays since FERC currently has no authority or experience with the siting of oil pipelines.

Unlike the existing process, this provision establishes a rebuttable presumption of approval, tipping the scale in favor of the project. Instead of requiring an agency to affirmatively find that a project is in the public interest, it shifts the burden of proof to opponents of the project to show that it is not in the public interest. Further a "border-crossing facility" is defined as the portion of the project "that is located at an international boundary of the United States." Trans-boundary pipelines and transmission lines are multi-billion dollar infrastructure investments that stretch hundreds of miles, last for decades, and pose environmental risks well beyond the border crossing. This language limits the scope of review for federal approval to just a sliver of a much larger project and makes it extremely difficult for an agency to prove an application as contrary to the public interest.

#### **Sec. 2(a)(3): Exclusions**

This section temporarily excludes from the new permitting process any cross-border project with permit approval pending on the date of enactment. This exclusion ends when the application is denied, or two years later for any application still pending. This provision would give controversial projects incentive to simply wait until the exclusion expires, and would give any project denied a presidential permit a second bite at the apple under the new, rubber-stamp process.

#### **Sec. 2(b): Importation or Exportation of Natural Gas to Canada and Mexico**

Subsection (b) amends section 3 of the Natural Gas Act to require DOE to grant authorization for the export or import of liquefied natural gas (LNG) to or from Canada or Mexico, within 30 days. Currently, companies wishing to export LNG to Canada or Mexico must obtain federal approval before doing so. These applications are relatively simple filings, and approvals can include conditions, such as prohibitions against simply using Canada or Mexico as a pass-through before shipping the gas to another country. The sets a deadline for DOE to grant authorization, but provides no mechanism for a deadline extension or denial of an application. If DOE is faced with rigid deadlines it cannot meet, the result will likely be unnecessary application denials rather than expedited approvals.

#### **Sec. 2(e): Modifications to Existing Projects**

Subsection (e) says that no certificate of crossing or presidential permit is required for modifications to existing projects. Under this section, modifications include a change in ownership, volume expansion, downstream or upstream interconnection, or adjustments to maintain flow (such as an increase or decrease in the number of pump or compressor stations). As a result, controversial modifications to existing cross-border pipelines or transmission lines would not require federal approval and would not be subject to any environmental review. Many modifications, as defined by this bill, could have environmental impacts just as significant as those resulting from an entirely new project.